



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

200905036

NOV - 7 2008

Uniform Issue List: 408.03-00

T:EP: RA:T3

Legend:

Taxpayer A =

IRA X =

Date 1 =

Date 2 =

Date 3 =

Financial Institution Z =

State N =

Regulation O =

Amount C =

Dear :

This is in response to a letter dated September 18, 2007, and as supplemented by letters dated May 5, 2008, May 12, 2008, and September 16, 2008, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("the Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 57, asserts that on Date 1 Taxpayer A received a distribution from IRA X of Amount C. Taxpayer A asserts her failure to accomplish a rollover of Amount C was due to financial institution error in failing to follow the instructions of Taxpayer A and in failing to consider her request for a waiver of her 3-day right to rescind a loan contract.

On Date 1 Taxpayer A received a distribution of Amount C from IRA X as a temporary bridge loan for the purpose of financing a newly constructed residence in State N. Taxpayer A intended to return Amount C to IRA X within the 60-day rollover period. Settlement of the permanent financing was completed on Date 2, a Thursday, which was the 57<sup>th</sup> day after Date 1. Taxpayer A has submitted documentation that Amount C was available to Taxpayer A to be wired back to IRA X in time to complete a rollover to IRA X within the 60-day period. Taxpayer A requested at that time that Financial Institution Z wire Amount C to the custodian of IRA X. However, Financial Institution Z, claiming a 3 business day right to rescind law, refused Taxpayer A's demand to wire Amount C to the IRA X custodian based on Regulation O which gave Taxpayer A the right to rescind the transaction until midnight of the third business day following the transaction. The right to rescind period expired, on Tuesday, Date 3, which would have been the 61<sup>st</sup> day after Date 1.

On Date 2 Taxpayer A requested that she be allowed to waive her 3-day right to rescind the loan contract but Financial Institution Z asserted that the right to rescind could not be waived. Taxpayer A has submitted documentation regarding Regulation O which Taxpayer A asserts, afforded Taxpayer A the right to request a waiver of the rescission period. As a result of Financial Institution Z's refusal to consider Taxpayer A's offer to waive the rescission period, the rollover of Amount C was not accomplished until Date 3 which was the 62<sup>nd</sup> day after the distribution of Amount C. Taxpayer A asserts her instructions to wire Amount C to the custodian of IRA X were ignored and she was denied the opportunity to complete a rollover within the 60-day period because of Financial Institution Z's refusal to consider her request to waive the rescission period.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement, with respect to the distribution of Amount C, contained in section 408(d)(3) of the Code ("the Code").

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement

pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with Taxpayer A's assertion that her failure to accomplish a rollover of Amount C was due to financial institution error in failing to follow the instructions of Taxpayer A and in failing to consider her request for a waiver of her 3-day right to rescind a loan contract

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount C from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount equal to Amount C to an IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

Please note that, pursuant to code section 408(d)(3)(E), this ruling letter does not authorize the rollover of the Code section 401(a)(9) minimum required distributions.

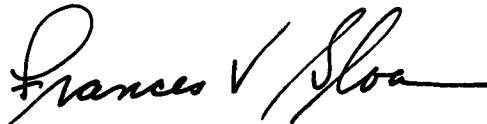
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions, please contact

Sincerely yours,

A handwritten signature in cursive script, reading "Frances V. Sloan". The signature is written in black ink and is positioned above the printed name.

Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter  
Notice of Intention to Disclose